

LFC Requester:**Jonas Armstrong**

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original x **Amendment**

Correction **Substitute**

Date January 25, 2016

Bill No: HB 111

Sponsor: Rep. James Townsend

Agency Code: 305

Short Title: CROP DUSTING TANKS AS

Person Writing Bill Grantham, AAG

ABOVE GROUND STORAGE

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

House Bill 111 ("HB 111") in Section 1 amends the definitions of "above ground storage tank" in the Hazardous Waste Act, NMSA 1978 § 74-4-3 to add an exemption for fuel storage tanks of less than 10,000 gallons used solely by a crop dusting or crop spraying service.

HB 111 in Section 2 amends the definitions of "above ground storage tank" Ground Water Protection Act, NMSA 1978 § 74-6B-3, to add an exemption for fuel storage tanks of less than 10,000 gallons used solely by a crop dusting or crop spraying service.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The Hazardous Waste Act allows more flexibility in the regulation of above ground storage tanks than is the case for underground storage tanks. (See NMSA § 74-4-4(C) (providing authority for regulations of storage tanks as may be necessary to protect public health and the environment and that, in the case of underground storage tanks, are equivalent to and no more stringent than federal regulations adopted by the EPA); see also NMSA § 74-4-4(D) (providing that rules concerning storage tanks must implement and be equivalent to and no more stringent than the federal Energy Policy Act of 2005, Pub. L. 109-58 and its guidelines and regulations. The provisions of the Energy Policy Act apply only to underground storage tanks). The Ground Water Protection Act contains no provisions regarding equivalency to federal regulations. Therefore, the amendments proposed by HB 111 do not appear to be precluded by federal stringency considerations.

In addition to exempting crop dusting/crop spraying above ground tanks from regulation, HB 111 would also exclude corrective action for releases from such tanks from coverage by the corrective action fund created at NMSA 74-6B-7. See NMSA § 74-6B-7 (C), providing for

expenditure of the fund at sites contaminated by “storage tanks;” NMSA § 74-6B-3 L, defining “storage tank” as “an above ground storage tank or an underground storage tank.”

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

“Crop dusting” and “crop spraying” are not defined. May need clarification as to whether intended to apply only to aerial means of spraying crops.

OTHER SUBSTANTIVE ISSUES

The amendments to the definitions of “above ground storage tank” in the Hazardous Waste Act and the Ground Water Protection Act would necessitate corresponding changes in section 7 of 20.5.1 NMAC, Petroleum Storage Tanks, General Provisions. As a result, such tanks would not be subject to the Petroleum Storage Tank regulations administered by the New Mexico Environment Department.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A